

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

HEIDI MALLOQUE and FELECIA
RACHNER, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

MULTICARE HEALTH SYSTEM,

Defendant.

No.

NOTICE OF REMOVAL

TO: HEIDI MALLOQUE and FELECIA RACHNER, Plaintiffs

AND TO: THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON

Defendant MultiCare Health System hereby provides notice of the removal of the above-entitled action from the Superior Court of the State of Washington for Pierce County to the United States District Court for the Western District of Washington at Tacoma pursuant to 28 U.S.C. §§ 1331 and 1441. The grounds for removal are as follows:

1. On or about May 27, 2010, Defendant was served with the Summons and Complaint for this action, which had not yet been filed by Plaintiffs. The Summons and Complaint were filed in the Superior Court of Washington for Pierce County on June 11, 2010.

NOTICE OF REMOVAL - 1

1 True and correct copies of the Summons and Complaint are attached to the Declaration of Skylee
 2 J. Robinson (“Robinson Decl.”) in Support of Defendant’s Notice of Removal as Exhibits
 3 (“Exhs.”) A and B, respectively. The only other pleading filed in the Pierce County Superior
 4 Court in this case is the Notice of Withdrawal and Substitution of Counsel, Exh. C to the
 5 Robinson Decl.

6 2. At all material times, “the terms and conditions of employment between
 7 MultiCare and the Plaintiffs...were and are governed by a Collective Bargaining Agreement
 8 negotiated between MultiCare and the Washington State Nurses Association, as the official
 9 bargaining representative of the Plaintiffs.” Exh. B at 3, ¶ 3.2.

10 3. Among others, Plaintiffs assert a claim that Defendant “has breached the express
 11 provisions of its [C]ollective Bargaining Agreement.” Exh. B at 8, ¶ 5.4.

12 4. Under 28 U.S.C. § 1441(a), a defendant may remove to federal court a civil action
 13 “brought in a State court of which the district courts of the United States have original
 14 jurisdiction.” Federal jurisdiction exists when a federal question is presented on the face of the
 15 plaintiff’s properly pleaded complaint. *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987).
 16 When a plaintiff chooses to plead what “must be regarded as a federal claim,” then “removal is at
 17 the defendant’s option.” *Sparta Surgical Corp. v. Nat’l Ass’n of Sec. Dealers, Inc.*, 159 F.3d
 18 1209, 1213 (9th Cir. 1998) (*quoting Caterpillar, Inc.*, 482 U.S. at 394).

19 5. Section 301(a) of the Labor Management Relations Act (“LMRA”) provides
 20 federal jurisdiction over “[s]uits for violation of contracts between an employer and a labor
 21 organization.” 29 U.S.C. § 185(a). A suit for breach of a collective bargaining agreement is
 22 governed exclusively by federal law under Section 301. *Young v. Anthony’s Fish Grottos, Inc.*,
 23 830 F.2d 993, 997 (9th Cir. 1987) (*citing Franchise Tax Bd. of State of California v. Const.*
 24 *Laborers Vacation Trust for Southern California*, 463 U.S. 1, 23 (1983)). The LMRA “governs
 25 claims founded directly on rights created by collective-bargaining agreements, and also claims
 26 substantially dependent on analysis of a collective bargaining agreement.” *Caterpillar, Inc.*, 482

1 U.S. at 394 (internal quotations omitted); *Young*, 830 F.2d at 997 (“The preemptive force of
2 section 301 is so powerful as to displace entirely any state claim based on a collective bargaining
3 agreement [citation omitted] and any state claim whose outcome depends on analysis of the
4 terms of the agreement”).

5 6. Plaintiffs’ complaint directly asserts a claim for breach of the Collective
6 Bargaining Agreement and is therefore preempted by Section 301(a) of the LMRA.
7 Additionally, any inquiry into the “breach of contract” claim would require an interpretation of
8 the Collective Bargaining Agreement, a role reserved for federal courts under Section 301.

9 7. Accordingly, removal of this case is proper under 28 U.S.C. § 1331 because it is a
10 civil action arising under the laws of the United States. Removal of the pendent state law claims
11 is proper under 28 U.S.C. § 1441(c).

12 8. The Western District of Washington is the judicial district embracing the place
13 where this action is pending. *See* 28 U.S.C. § 128(b).

14 9. In accordance with 28 U.S.C. § 1446(b) and Fed. R. Civ. P. 81(c), this Notice of
15 Removal is filed within thirty (30) days of Defendant’s receipt of Plaintiffs’ initial pleading. The
16 state court in which this action commenced is within this Court’s district and division.
17 Therefore, this action is properly removable under 28 U.S.C. §§ 1441 and 1446.

18 10. In accordance with 28 U.S.C. § 1446(d), copies of this Notice of Removal will be
19 served on the Plaintiff and filed with the Clerk of the Superior Court for the State of Washington
20 for Pierce County.

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NOTICE OF REMOVAL - 3

1 DATED: June 23, 2010 at Seattle, Washington.

2 STOEL RIVES LLP

3 s/ Skylee J. Robinson

4 Timothy J. O'Connell, WSBA No. 15372

5 Elena C. Burt, WSBA No. 38836

6 Skylee J. Robinson, WSBA No. 42419

7 600 University Street, Suite 3600

8 Seattle, WA 98101

9 Telephone: (206) 624-0900

10 Facsimile: (206) 386-7500

11 Email: tjoconnell@stoel.com

12 Email: ecburt@stoel.com

13 Email: sjrobinson@stoel.com

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NOTICE OF REMOVAL - 4

CERTIFICATE OF SERVICE

I hereby certify that on June 23, 2010, I electronically filed the foregoing with the Clerk of the Court, and that copies of same were sent to the following attorneys of record by the method indicated below:

Steven M. Hansen
LOWENBERG, LOPEZ & HANSEN, P.S.
Suite 450 Rust Building
960 Pacific Avenue
Tacoma, WA 98402-4441
Telephone: (253) 383-1984
Facsimile: (253) 383-1808
Attorneys for Plaintiff
Via Facsimile and Hand Delivery

DATED: June 23, 2010 at Seattle, Washington.

STOEL RIVES LLP

s/ Skylee J. Robinson
Timothy J. O'Connell, WSBA No. 15372
Elena C. Burt, WSBA No. 38836
Skylee J. Robinson, WSBA No. 42419
600 University Street, Suite 3600
Seattle, WA 98101
Telephone: (206) 624-0900
Facsimile: (206) 386-7500
Email: tjoconnell@stoel.com
Email: ecburt@stoel.com
Email: sjrobinson@stoel.com

NOTICE OF REMOVAL - 5